April 16, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals - 445 Twelfth Street, S.W.
12th Street Lobby, TW-A325
Washington, D.C. 20554

Re: Ex Parte Presentation in CC Docket Nos. 96-262, 01-92

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's rules, NewSouth Communications ("NewSouth") hereby files this written ex parte in the above-captioned proceedings. MCI[1] and AT&T[2] filed written *ex parte* letters disputing positions taken by NewSouth in written *ex partes* filed on March 1 and 2, 2004. NewSouth will not repeat the arguments it made in those earlier letters. Suffice it to say that, as indicated in those earlier letters, the Commission in *Access Charge Reform*, Seventh Report and Order, FCC 01-146 (rel. April 27, 2001) (*Seventh Report and Order*), clearly supports NewSouth's position in this matter. After careful review of AT&T's and MCI's letters, NewSouth responds to two statements contained in the *ex parte* filings.

First, AT&T at page 5 of its ex parte argues that the geographic equivalency test mandated in the reciprocal compensation context should not apply to access charges. Although its argument is vague, it appears to be arguing that reciprocal compensation at TELRIC prices for the exchange of local traffic makes sense because this rewards a CLEC for efficient network configuration, whereas in the access context geographic equivalency is simply a ruse to increase access charges. NewSouth disagrees. AT&T's assertion that NewSouth configured its network to maximize receipts is unsupported and erroneous. If NewSouth was motivated to create an efficient network for exchange of local traffic, it was equally efficiency-minded in creating an access network: the two networks are one in the same. Also, the FCC has already found that price cap switched access rates are approaching actual costs under the CALLS plan, therefore, there is no price gouging. *Access Charge Reform*, Sixth Report and Order, FCC 00-193, at ¶ 158

[1] Letter from Henry G. Hultquist, MCI to Marlene H. Dortch, Secretary, FCC (March 22, 2004).

[2] Letter from Peter H. Jacoby, AT&T, to Marlene H. Dortch, Secretary, FCC (March 30, 2004).

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(rel. May 31, 2000). Tandem access functionality is being provided by a CLEC when its switch serves a geographic area that is equivalent to the service area an ILEC serves with its tandem. This same principle should apply in both the reciprocal compensation and access charge environments since the service provided is the same in both instances, only the jurisdictional nature of the traffic is different.

Second, there is no "double billing" because the CLEC is simply charging for what it provides.[3] The FCC has never dictated how a CLEC network should be configured, and has never declared what is efficient or inefficient for purposes of access charges. In fact, the FCC rightly refused to tightly regulate CLEC access offerings because they deserve additional flexibility. It is for that reason that the FCC decided to adopt a gross or surrogate estimate of what the overall access charge should be for CLECs, rather than specifically prescribing individual rate elements. Although MCI and AT&T make unsupported claims that the *Seventh Report and Order* was intended to further reduce the price of CLEC access charges below the aggregate benchmark price, the Order itself does not contain the analysis that these parties apparently wish it did. Neither AT&T nor MCI are making a principled argument based on the FCC's *Seventh Report and Order*, but rather they are simply trying to decrease the rate they have to pay. The good news for the IXCs is that, any IXC has the ability to minimize its access charges by directly connecting with a CLEC, thereby avoiding the tandem switching charge levied by the ILEC. AT&T's claim that requiring it to pay the full ILEC rate distorts the normal economic and engineering judgments that would be made when deciding whether to direct-connect to a CLEC inexplicably assumes the answer to its argument. Given that the Commission has already solved the problem of high terminating access charges on the part of CLECs, it should not be drawn in to this further attempt by IXCs to arbitrarily reduce their costs at the expense of CLECs.

NewSouth urges the FCC to reemphasize the conclusions outlined in the March 1 and 2 letters so that there is no further litigation and uncertainty with respect to CLEC access charges after June 21, 2004. Please let me know if you have any questions.

Sincerely,

/s/ Jake E. Jennings

Jake E. Jennings
Senior Vice President, Regulatory Affairs
and Carrier Relations

cc: Christopher Libertelli
Trey Hanbury
Matthew Brill

[3] The *Bell Atlantic Telephone Companies* decision that AT&T cites at page 3 of its ex parte, of course, does not apply to a CLEC. That case made clear that an ILEC cannot charge for elements of access service it does not provide because the ILEC's rate elements are carefully unbundled and individually prescribed in Part 69 of the Commission's Rules. In paragraph 55 of the *Seventh Report and Order*, the FCC specifically refused to prescribe individual rate elements or prices for CLECs.

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